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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,241	11/20/2001	Allen M. Razdow	T0456/7011	9621
28120	7590	07/30/2004	EXAMINER	
ROPE & GRAY LLP ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			HUYNH, BA	
			ART UNIT	PAPER NUMBER
			2179	

DATE MAILED: 07/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/989,241

Applicant(s)

RAZDOW ET AL.

Examiner

Ba Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/6/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,330,008. Although the conflicting claims are not identical, they are not patentably distinct from each other because the broad scope of pending claims 4-5 are read on by the patented claims 1-18. Further, pending apparatus claims 1-3 are obvious mirror image of the method and computer instructions recited in the patented claims 1-18.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for

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patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by US patent

#6,311,265 (Beckerle et al).

- As for claims 1, 4, 5: Beckerle et al (Beckerle) teach a computer system comprising means for computing a data flow graph comprised the following components:

a plurality of operators 110 in computer readable memory, each of which defines operation programming for performing an operation,

one or more communication ports, each of which is either an input port for providing the operation programming a data stream of one or more records, or an output port for receiving a data stream of one or more records from the operation programming (9:38-52; 10:6-15), and

one or more data objects, each of which is capable of supplying or receiving a data stream of one or more records (8:14 – 9:37),

a datalink associated with each of one or more of the communication ports of the operators in said graph, each of which defines a communication path for the communication of a data stream of records between its associated communications port and either a specific data object or the specific communication port of another specific operator in said graph (abstract; 26:8-17); and

visualization means including means for receiving varying performance information about the state of the computation of said data flow graph at each of varying points of time and at each of

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various components of said data flow graph, and means for providing a graphic representation of said data flow graph as a graphic network including said operators and connecting datalinks, including means for providing at each of varying points of time a representation of said varying information relating to each of said various components at a location in said graphic representation corresponding to the location of said component in said graphic representation (26:41 - 27:38; see explanations of figures 73-76).

- As for claim 2: The operators is a parallelizable operator and said means for computing a data flow graph includes means for parallelizing the execution of said data flow graph including:

parallelizing the execution of individual parallelizable operators in said graph by causing a separate instance of each such operator, including its associated operation programming, to be run on each of multiple processors, with each instance of a given operator having a corresponding input and output port for each input and output port of the given operator; and dividing the data stream associated with a datalink connected to the communication port of a given parallelized operator into a separate data stream partition connected to the corresponding communication port of each instances of the given operator (abstract).

- As for claim 3: The means for providing a graphic representation includes means for providing a graphic representation of the individual instances of a parallelized operator and of the individual data stream partitions connected to the one or more communication ports of that operators and providing said varying information about the flow of records on data stream

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partitions connected to the communication ports on each of a plurality of instances of a given parallelized operator (1:36 2:45).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ba Huynh whose telephone number is (703) 305-9794. The examiner can normally be reached on Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Herndon can be reached on (703) 308-5186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ba Huynh
Primary Examiner
AU 2173
7/24/04

BA HUYNH
PRIMARY EXAMINER